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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of NORMAN and BONNIE STEINBERG.	B295094
NORMAN STEINBERG,	(Los Angeles County
 Appellant,	Super. Ct. No. BD391395)
 v.	
 BONNIE STEINBERG,	
 Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County. Gregory J. Weingart, Judge. Dismissed.

Law Offices of Kenneth M. Stern and Kenneth M. Stern for Appellant.

Law Offices of Bradford L. Treusch and Bradford L. Treusch for Respondent.

Appellant Norman Steinberg appeals from a post-judgment order in this marital dissolution action, contending the trial court erred in denying his request to terminate a requirement in the judgment to maintain a life insurance policy on his own life designating his ex-spouse, respondent Bonnie Steinberg (Strock), as the irrevocable beneficiary. We dismiss the appeal for lack of jurisdiction.

## **I. FACTS AND PROCEDURAL HISTORY**

### *A. The 2004 Marital Dissolution Judgment*

Bonnie and Norman<sup>1</sup> were married for 24 years 8 months before separating in June 2003. They dissolved their marriage pursuant to a stipulated judgment on April 1, 2004 (the 2004 Judgment). With respect to spousal support, the 2004 Judgment provided that, commencing June 2004, Norman would pay Bonnie \$5,240 per month “until death of either party or the remarriage of [Bonnie].”<sup>2</sup> The 2004 Judgment also contained a provision stating, “LIFE INSURANCE POLICY: The parties agree and the [c]ourt orders that as security for the spousal support payment set forth herein, [Norman] shall maintain a life

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<sup>1</sup> For the sake of clarity, we adopt the parties’ convention of referring to themselves and each other in their pleadings by first names.

<sup>2</sup> The judgment contained additional provisions that contemplated both downward adjustments, or support payments in addition to the base monthly amount, depending upon Norman’s actual monthly and annual income. The details of these provisions are not material to the issues presented on appeal.

insurance policy on his life with a face value amount of [\$1 million] during the time [Norman] is obligated to pay spousal support to [Bonnie]. The irrevocable beneficiary of such policy shall be [Bonnie] and/or her assigns. [Norman] shall maintain this life insurance policy in full force and effect for a minimum of [15] years from the entry of this Stipulated Judgment, after which time the [c]ourt shall retain jurisdiction over the issue of life insurance. [Norman] shall provide [Bonnie] with verification of the existence of the life insurance policy prior to execution of any Stipulated Judgment and annually thereafter. [Norman] shall collaterally assign the life insurance policy to [Bonnie].”

B. *The 2007 Modification*

In 2007, Norman filed an order to show cause to modify spousal support<sup>3</sup> and, prior to hearing, the parties resolved the modification request by filing a “Stipulation and Order for Modification of Judgment” (the 2007 Modification).<sup>4</sup> The 2007 Modification provided, on a prospective basis, for a reduction in the spousal support set in the 2004 Judgment, to \$2,510 per month beginning August 2007, and then \$2,010 per month beginning February 2008. The 2007 Modification further provided that the paragraph regarding the life insurance policy be amended to read as follows: “LIFE INSURANCE POLICY:

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<sup>3</sup> The order to show cause is not part of our record on appeal.

<sup>4</sup> The 2007 Modification also eliminated the provisions from the 2004 Judgment that provided for downward adjustments or additional support payments based on variations in Norman’s income.

The parties agree and the [c]ourt orders that as security for the spousal support payment set forth herein, [Norman] shall maintain a life insurance policy on his life with a face value amount of [\$500,000] during the time [Norman] is obligated to pay spousal support to [Bonnie]. The irrevocable beneficiary of such policy shall be [Bonnie] and/or her assigns. [Norman] shall provide [Bonnie] with verification of the existence of the life insurance policy annually. [Norman] shall collaterally assign the life insurance policy to [Bonnie] and provide [Bonnie] with evidence of such assignment.” The 2007 Modification also stated that, “[e]xcept as modified by this Stipulation, the [2004 Judgment] shall remain in full force and effect.” The trial court entered an order modifying the 2004 Judgment based on the stipulation of the parties.

*C. The 2011 and 2013 Court Orders*

In 2011, following a contested hearing on Bonnie’s order to show cause for spousal support, the trial court modified the spousal support payment upward, to \$3,800 per month, and ordered that the life insurance remain as set forth in the parties’ 2007 stipulation.

In 2013, Bonnie filed an order to show cause seeking to clarify and enforce a provision in the judgment requiring Norman to pay her medical insurance. The trial court entered an order granting Bonnie’s request and noted that all other existing orders remained in full force and effect.

D. *The 2018 Litigation*

a. Norman's request for order

On April 18, 2018, Norman filed a request for order seeking to terminate his spousal support obligations, to terminate his obligation to maintain the life insurance policy, and to terminate the order requiring him to pay Bonnie's health insurance. Norman submitted a declaration in support of his requests, stating he would be retiring effective in August 2018 at the age of 79 and that he and Bonnie would have the same or similar incomes, from his pension, social security, and her work. Specifically with respect to life insurance, Norman stated he had been paying \$6,500 per year for the \$500,000 policy since the 2007 Modification, but anticipated an increase in his premiums to \$17,000 per month when he turned 80 in 2019. Norman argued the policy should be terminated along with his support, as the 2007 Modification provided that he have the policy "during the time [Norman] is obligated to pay spousal support," and because it is cost prohibitive and impossible to pay.

Bonnie opposed the requests. She argued that then current spousal support orders should not be modified in any respect. With respect to the life insurance policy, Bonnie argued that she had specifically bargained for the provision so that she would have sufficient income upon [Norman's] death to sustain her living. Bonnie also disputed Norman's position that maintaining the insurance was cost prohibitive, stating her understanding that the annual cost of a \$500,000 policy was only \$16,800 per year, an annual amount less than the monthly amount claimed by Norman. Bonnie's declaration filed in support of her opposition stated that she had agreed to the 2007 Modification reducing her monthly spousal support and cutting the value of

the life insurance policy from \$1 million to \$500,000 because Norman had falsely asserted he had retired and had less income; in fact, Bonnie contended, he had failed to disclose his new employment.

Norman filed a reply to Bonnie's opposition, supported by his own declaration, stating that Bonnie knew of his new employment before he began and that a life insurance policy even if available for \$16,000 per year would still be unaffordable for him.

The trial court held a hearing on Norman's request at which it accepted the parties' declarations as direct testimony, subject to rulings made on specific objections. Norman also testified at the hearing as to his understanding of the life insurance, that it "was characterized as—as insurance against the alimony payments," and that he never missed a payment in 15 years.<sup>5</sup> The trial court took the matter under submission.

b. The trial court's ruling

On October 1, 2018, the trial court issued a written ruling that reduced Norman's spousal support obligation to \$500 per month, maintained Norman's obligation to pay \$500 per month towards Bonnie's health insurance, and denied Norman's request to terminate the requirement that he maintain the life insurance policy. The clerk of the court served notice of entry of order and the written ruling on the parties that same day. In its ruling, the trial court reasoned that its discretion to modify was constrained by the terms of the marital settlement agreement and that "[Norman and Bonnie] agreed that the insurance would be

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<sup>5</sup> Bonnie testified briefly at the hearing, but not about the life insurance policy.

maintained so long as support was to be paid, and support will continue to be paid. The insurance provision is security for future spousal support payments, which [Norman] will still be obligated to make.” The trial court also noted that the 2004 Judgment provided that insurance payments would be made for a minimum of 15 years, which time had not yet elapsed. The trial court also found that, in any event, Norman had not shown a change in circumstances warranting modification, because an increase in premium amounts as Norman aged must have been reasonably understood by the parties, represented by sophisticated counsel, at the time they entered into the stipulated judgment.

c. The motion for reconsideration

On October 10, 2018, Norman filed a motion for reconsideration of the trial court’s October 1, 2018 order pursuant to Code of Civil Procedure section 1008, subdivision (a). With respect to the life insurance policy, he requested that his last payment for life insurance be in March 2019, and that the court reserve jurisdiction thereafter, essentially adopting the provision that had been included in the 2004 Judgment. Norman argued that March 2019 marked 15 years from the time of the 2004 Judgment, which had provided for life insurance for a minimum of 15 years, and that payment for the insurance was financially onerous and not sustainable. Norman cited the 2004 Judgment as authority for the trial court to make the requested order.

Bonnie opposed the motion for reconsideration as failing to present new law or facts, as required by Code of Civil Procedure

section 1008. She also noted that the 2007 Modification modified the 2004 Judgment to delete the 15-year minimum provision.

Norman filed a reply in which he argued that the trial court had discretion to modify or terminate the life insurance provision under Family Code section 4360, subdivision (b), up until the time of Norman's death, because the 2007 Modification did not prohibit modifications.

On December 14, 2018, the trial court held a hearing on the motion for reconsideration at which the parties and their counsel appeared. The trial court noted that, although the 2004 Judgment provided that the life insurance would be maintained at least 15 years, the subsequent modification reflected "an agreement that [the life insurance policy] was going to be maintained as long as support was ordered." The trial court ruled that it had to respect the parties' agreement, and its purpose, which the trial court stated was, "to secure the future payment of support in the event that one party is . . . no longer alive to pay it." The trial court denied the motion for reconsideration, finding it was not based on new facts, circumstances, or law. The trial court issued its ruling in a minute order the day of the hearing, indicating that no notice was required.

d. Appeal

On January 11, 2019, Norman filed a notice of appeal with the trial court, purporting to appeal from an order after judgment pursuant to Code of Civil Procedure section 904.1, subdivision (a)(2), and also stating, "Motion for Reconsideration of Order to Maintain Life Insurance Policy for [Bonnie] was heard and denied on December 13, 2018. [Norman] bring [*sic*] the appeal



from that Order.” Norman filed a Civil Case Information Statement with this court indicating he was appealing from a trial court order dated December 14, 2018, which would appear to be the denial of the motion for reconsideration. Following a request by this court to file a copy of the order being appealed, Norman filed a corrected Civil Case Information Statement attaching the trial court’s October 1, 2018 Ruling on Submitted Matter. In his corrected statement, Norman noted that notice of entry of that order was served pursuant to California Rules of Court, rule 8.104 that same day, and that it had been subject to a motion for reconsideration filed October 10, 2018, which was denied in December 2018. Norman also clarified that the October 1, 2018 order was appealable under Code of Civil Procedure section 904.1, subdivisions (a)(3)-(13).<sup>6</sup>

Following receipt of the parties’ briefs on appeal, we issued a letter to the parties providing an opportunity to address, in supplemental letter briefs and at oral argument, whether Norman’s notice of appeal was timely filed. Bonnie filed a letter brief arguing that the appeal must be dismissed because Norman filed his notice of appeal 93 days after the filing of his motion for reconsideration, whereas he was permitted at most 90 days after such filing. (Cal. Rules of Court, rules 8.104(a)(1), (b) &

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<sup>6</sup> After filing his appeal, Norman filed a petition for writ of supersedeas in this appellate court, seeking to stay the trial court’s October 1, 2018 order and contending he will be irreparably injured by having to pay the insurance premiums during the pendency of his appeal. We denied the petition for failure to first seek relief in the family court. However, we found the matter entitled to preference and set an expedited schedule for briefing and argument.

8.108(e)(2).)<sup>7</sup> Norman filed a letter brief in which he did not contend his notice of appeal was timely filed; rather, he argued that this court should treat an untimely appeal as a petition for writ of mandate. At oral argument, Norman conceded the notice of appeal was filed late and again requested that the appeal be treated as a petition for writ; relying on Norman's concessions that the order was appealable and the notice untimely, Bonnie argued only that this court had no jurisdiction to treat the matter as a writ.<sup>8</sup>

## II. DISCUSSION

The trial court's October 1, 2018 order concerning matters relating to support under Division 9 of the Family Code is an

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<sup>7</sup> All further rules references are to the California Rules of Court.

<sup>8</sup> After oral argument, Norman sought leave to make several additional filings, including to abandon his prior concessions that his notice of appeal was untimely. We decline to exercise our discretion to permit additional filings pursuant to Rule 8.200(a)(4) and find that any new arguments therein have been forfeited. (See *American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 276 ["Fairness militates against allowing an appellant to raise an issue for the first time in a reply brief because consideration of the issue deprives the respondent of the opportunity to counter the appellant by raising opposing arguments about the new issue. [Citation.]"])

appealable order. (Fam. Code, § 3554; Code Civ. Proc., § 904.1, subd. (a)(10).)

Pursuant to rule 8.104(a)(1)(A), Norman would normally have had 60 days to file his notice of appeal from October 1, 2018, the date the clerk of the court served the notice of entry of its order; however, because of his timely filing of a motion for reconsideration pursuant to Code of Civil Procedure section 1008, on October 10, 2018, the time for filing the notice of appeal was extended, at most, to 90 days following the filing of the motion for reconsideration. (Rules 8.108(e)(2) & 8.104(a)(1).) Ninety days from October 10, 2018, was January 8, 2019. Because Norman did not file his notice of appeal until January 11, 2019, 93 days after he filed his motion for reconsideration, the notice of appeal was untimely.

“[N]o court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.” (Rule 8.104(b); *Beresh v. Sovereign Life Ins. Co.* (1979) 92 Cal.App.3d 547, 551 (rule that an appeal must be timely filed is jurisdictional, and an appellate court has no discretion to hear an untimely appeal but must dismiss it on its own motion); see also *In re Marriage of Cordero* (2002) 95 Cal.App.4th 653, 665-666.)

Norman requests that we treat the appeal as a writ, citing *Olson v. Cory* (1983) 35 Cal.3d 390 (*Olson*) and its progeny. “An attempted appeal from a nonappealable interim order has sometimes been treated as a writ petition. (See *Olson*[, *supra*, at pp.] 400-401 . . . .) However, there is no authority for treating an untimely appeal as a writ petition. [Citation.] To do so would be improper because a writ petition should be entertained only where there is no adequate remedy by appeal and the remedy by

appeal is not made inadequate by a party's having neglected to submit his notice of appeal for filing within the time allowed. [Citation.] Appellate courts have taken great care to impose limits on the practice of treating faulty appeals as writ petitions and we see no policy justification for breaching these limits by expanding the practice to permit review where a notice of appeal was filed late." (*In re Marriage of Patscheck* (1986) 180 Cal.App.3d 800, 804; see also *Annette F. v. Sharon S.* (2005) 130 Cal.App.4th 1448, 1459-1460.) This court lacks jurisdiction to consider Norman's untimely appeal from a clearly appealable order. His notice of appeal is not susceptible to being treated as a petition for writ of mandate and must be dismissed. Even assuming this court had the discretion to treat the untimely appeal as a writ, we are not persuaded that Norman's principal reason to hear this matter as a writ—that the appeal is fully briefed—is a persuasive reason to reach the merits.<sup>9</sup>

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<sup>9</sup> In connection with his appeal, Norman filed a request for judicial notice asking this court to take notice of the life expectancy of a male his age, as calculated by the Social Security Administration. In light of the dismissal, the request is moot.

### **III. DISPOSITION**

The appeal is dismissed.

MOOR, J.

WE CONCUR:

BAKER, Acting P.J.

KIM, J.